

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**ATLAS MECHANICAL OF NEVADA,
INC., A CLOSE CORPORATION**

Employer

and

Case 28-RC-6374

**SHEET METAL WORKERS UNION,
LOCAL NO. 88, AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

On July 21, 2005, the Acting Regional Director for Region 28 issued the Decision and Direction of Election in the above-captioned case (the Decision), directing that an election be conducted in a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.¹ On July 28, 2005, the Regional Director issued an Order to Show Cause, thereby directing the parties to show cause as to why the *Daniel/Steiny*² eligibility formula should not be applied to the election in this matter. On August 3 and 15, 2005, respectively, the Employer and the Petitioner filed responses to the Order to Show Cause.³ Having fully considered the parties' responses, and based on the record in this matter, the Decision is hereby supplemented to specifically apply the *Daniel/Steiny* eligibility formula to the election.

The issue presented is whether the Employer is an employer engaged in the construction industry. If the Employer is a construction industry employer, the election eligibility in this matter will be determined using the *Daniel/Steiny* formula.

The Board has adopted the definition of building and construction as involving "the provision of labor whereby materials and constituent parts may be combined on the building site to form, make, or build a structure." *Carpet, Linoleum and Soft Tile Local Union No. 1247 (Indio Paint)*, 156 NLRB 951, 959 (1966). Construction pertains to new and existing structures. *Reese M. Garab d/b/a South Alabama Plumbing*, 333 NLRB 16, 22 (2001); see *U.S. Abatement, Inc.*, 303 NLRB 451, 455, 456 (1991). In *U.S. Abatement, Inc., Id.*, the

¹ The Unit found appropriate is as follows: "All full-time employees performing sheet metal installation, at various job sites, for which the Employer is a contractor, operating from its Sunset Road, Las Vegas, Nevada operation, but excluding all other employees, office clericals, guards and supervisors as defined in the Act."

² *Daniel Construction Co.*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967), and *Steiny & Co.*, 308 NLRB 1323 (1992).

³ On August 3, 2005, the Employer also filed with the Regional Director its Request for Clarification of Decision and Direction of Election to Incorporate *Daniel/Steiny* Formula.

Board adopted, at footnote 1, the broad definition of construction used by the administrative law judge in that matter:

Construction covers the erection, maintenance, and repair (including replacement of integral parts), of immobile structures and utilities, together with service facilities which become integral parts of structure and are essential to their use for any general purpose.... Construction covers those types of immobile equipment which, when installed, become integral part of the structure and are necessary to any general use of the structure. This includes such service facilities as plumbing, heating, air-conditioning and lighting equipment, elevators, and escalators....

The record in this matter shows, and, I find, that the Employer is a construction industry employer. The description of the Unit in this matter, to which the parties stipulated at hearing, shows that the employees in the Unit perform sheet metal *installation* at various *job sites* for the Employer, *a contractor* (emphasis added). Moreover, the Employer's State of Nevada Contractor's License shows that the Employer is currently a licensed refrigeration and air conditioning contractor.⁴ Finally, I note that the Petitioner's response to the Order to Show Cause does not dispute that the Employer is engaged in the construction industry.

Having found that the Employer is engaged in the construction industry, I direct that the *Daniel/Steiny* eligibility formula be applied to the election in this matter. The Board has determined that this formula is applicable in all construction industry elections. *Steiny*, supra, 308 NLRB at 1327. The Board continues to hold that the *Daniel/Steiny* eligibility formula shall be utilized in all construction industry elections unless the parties specifically stipulate not to use it. *Steiny*, supra, 308 NLRB at 1328, fn. 16; *Signet Testing Laboratories*, 330 NLRB 1 (1999). The record in this matter shows that the parties have not stipulated or otherwise agreed that the *Daniel/Steiny* formula will not be used in the conduct of the election.

Accordingly, based upon the foregoing and the record as a whole, I continue to find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time employees performing sheet metal installation, at various job sites, for which the Employer is a contractor, operating from its Sunset Road, Las Vegas, Nevada operation, but excluding all other employees, office clericals, guards and supervisors as defined in the Act.

⁴ The Employer attached to its response to the Order to Show Cause a copy of its current State of Nevada Contractor's License. I take administrative notice of the Employer's contractor's license. No objection to the submission of the license has been made by the Petitioner.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above Unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the Unit who are employed during the payroll period ending immediately preceding the date of this Supplemental Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In addition, all employees who have been employed for a total of 30 working days or more within the 12-month period immediately preceding the eligibility date for the election, or have had some employment in those 12 months and have been employed 45 working days or more within the 24-month period immediately preceding the eligibility date, are also eligible. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the Unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they have quit or been discharged for cause prior to the completion of the last job for which they were employed; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before an election date; and if they have engaged in an economic strike which began more than 12 months before the election. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

SHEET METAL WORKERS UNION, LOCAL NO. 88, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that, within seven (7) days of the date of this Supplemental Decision, the Employer file with the undersigned two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Region 28 Resident Office, 600 Las Vegas Boulevard S., Suite 400, Las Vegas, NV 89101-6637, on or before August 30, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by September 6, 2005. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 23rd day of August 2005.

/s/Gordon J. Jorgensen

Gordon J. Jorgensen, Acting Regional Director
National Labor Relations Board, Region 28